

### **REMARKS/ARGUMENTS**

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-55 are presently active; Claims 1, 2, 5, 14, 23, and 24 having been presently amended, and Claims 50-55 having been presently added.<sup>1</sup>

In the outstanding Office Action, Claim 23 was objected to. Claims 40 and 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Reuhl et al (U.S. Pat. No. 5,873,069). Claims 1, 2, 3, 5, 24, 25, 26, and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Riordan et al (U.S. Pat. No. 6,078,891). Claims 40 and 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Reuhl et al (U.S. Pat. No. 5,873,069). Claims 6-23 and 29-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Riordan et al in view of Reuhl et al. Claims 4 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Riordan et al and Reuhl et al in view of Negin (an Iris Biometric System for Public and Personal Use, February 2000, IEEE # 0018-9162/00). Claims 41-42 and 45-49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Reuhl et al in view of Riordan et al.

Regarding the objection to Claim 23, Claim 23 has been amended to address the noted informality in the outstanding Office Action by following M.P.E.P § 608.01(n) I. A. **Acceptable Multiple Dependent Claim Wording** (the third listed example). Thus, it is respectfully submitted that the objection to Claim 23 has been overcome.

Firstly, Applicant acknowledges with appreciation the courtesy of Examiner Charles to conduct an interview in this case on June 4, 2004. During the interview, the issues identified in the outstanding Office Action were discussed as summarized substantially herein.

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<sup>1</sup> Support for the new claims is found in the specification on page 8, line 25, to page 9, line 18.

Specifically, the above noted wording in dependent Claim 23 was discussed and agreed to. Given this understanding, submitted herewith are the changes discussed during the interview with regard to Claim 23.

Further during the interview, Applicant's representative pointed out in Applicant's specification that:

Consumer purchases these days are becoming increasingly more competitive. To entice consumers to buy a particular product, many retailers and discounters are using a frequent shopper card which, when presented at the time of purchase, substantially reduces the price of the item from that available to members of the public who have no frequent shopper card. These price discounts can vary as merchants use discounts to entice sales in items which will soon expire, be superceded by other items, or in which the distributors or manufacturers have themselves added promotional incentives. While such discount incentives are apparently mutually beneficial to the seller and buyer, knowledge of the actual price paid is critical in determining price margins and the price-acceptance by a customer.<sup>2</sup>

Thus, data reflecting not the inventory list price nor the advertised sales price but rather the actual price paid is needed from across many sources to ensure reliable statistical determinations to be valid.<sup>3</sup>

The present invention overcomes these problems by a central price-paid database that, as presently amended, recurrently obtains on a predetermined schedule from checkout computers at retail stores information about the price paid for purchased items, as defined in the independent claims.<sup>4</sup> Thus, providing a pseudo-real time database to capture actual prices paid.<sup>5</sup> Consequently, price margins and price acceptance can be determined by the present invention more quickly than would otherwise be possible in systems where sales prices and price lists are recorded.

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<sup>2</sup> Specification, page 1, lines 11-22.

<sup>3</sup> Id., page 2, lines 25-30.

<sup>4</sup> Id., page 8, line 25, to page 9, line 18.

<sup>5</sup> Id., page 2, lines 28-29.

Such advantages are not found in the applied prior art. The outstanding Office Action relies on Riordan et al for its teaching of transferring marketing data from a point of sale computer 120 to credit authorization center 150. Riordan et al specifically disclose that:

In step 310, a program resident in POS computer 120 creates an invoice packet for transmission to credit authorization location 165. The invoice packet comprises the line item listing described above. The invoice packet further comprises a request for authorization from credit authorization location 165. The request for authorization typically comprises the identification number and PIN of the customer's payment vehicle and the total amount of the sale.

In step 312, the invoice packet is transmitted to credit authorization location 165. In the prior art, transmission from the merchant to credit authorization computer 170 served only one purpose: To request authorization for a transaction. In contrast, the purpose of the invoice packet of the present invention is two fold: First, to request authorization for the transaction from credit authorization location 165, and second, to transmit to credit authorization location 165 a line item listing concerning the transaction. In this way, the invention efficiently employs the communications link established with credit authorization location 165 to simultaneously transmit thereto a line item listing comprising complete marketing data concerning the transaction.<sup>6</sup>

The data transmission to the credit authorization location does not occur on a predetermined schedule, but rather occurs on an ad hoc basis as needed to verify credit authorization. Further, not all of point of sale information is collected. Only data pertaining to credit authorized purchases are collected. Furthermore, Applicant submits that there is no need or motivation in Riordan et al to recurrently send the marketing data on a predetermined schedule, as the market data being transmitted is only needed in Riordan et al when credit authorization is warranted.

Hence Applicant submits that there is no disclosure or motivation in Riordan et al to recurrently send the marketing data to the credit authorization location, and thus no disclosure or suggestion for the feature of recurrently obtaining on a predetermined schedule from

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<sup>6</sup> Riordan et al., column 5, line 55, to column 6, line 8.

checkout computers at retail stores information about the price paid for purchased items, as defined in the independent claims.

For the reasons stated above, it is respectfully submitted that independent Claims 1 and 24 and the claims dependent therefrom patentably define over the applied prior.<sup>7</sup>

Further, regarding Claims 40 and 44 as being anticipated by Reuhl et al, Reuhl et al tracks pricing and *repricing* information. Reuhl et al disclose that:

... a system of processing automated pricing of retail goods and merchandise responsive to market price changes. The invention provides an enterprise-wide (e.g., a retailer with many locations in many market areas) data structure and database for an integrated retail price information storage, processing and reporting system. That is, the database of the system stores and maintains prices on a plurality of goods in a plurality of markets for the system user and a plurality of competitors.

The hardware for the system comprises in combination, a storage device for storing retail price data in the enterprise-wide data structure format, a memory medium and a central processing unit. The data structure and data requirements for the system user selling a plurality of goods are identified and documented in table format and entered into tables of the database in the computer storage device. The database in accordance with the present invention is suitably a relational database. The tables of the database are in the format of rows and columns. Since the database is relational, each of its tables will have a column that is the same as a column of at least one other table.

The system also contains a stored program-controlled application for pricing and repricing product items responsive to *market price changes* on a product-by-product and market-by-market basis. That is, as data records in the *tables regarding system company prices and competitor prices are updated*, a pricing software program is invoked which *automatically reprices* items in accordance with a predetermined pricing standard or rules.

Thus, the system of the present invention is also a computerized price control system for implementing pricing standards/policies. In a preferred embodiment, the pricing policies are directed to having the lowest price for any particular item or a substantially similar item in a particular market. In addition, the pricing system allows for display on the sales floor of current valid price comparisons *to demonstrate the lowest price on a particular item* in the market in which a buyer is shopping.

Specifically, the price-changing function of the system is responsive to competitive *price data* on identical or substantially similar products in

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<sup>7</sup> During the interview, Applicant's representative pointed out one specific difference in the predetermined schedule of information delivered to the central computer. That specific difference (i.e., the initiation of the request for information by the central computer) is defined in new Claims 50-52.

multiple geographic markets for multiple competitors. The database of the system includes indicia for each item sold, including a product identification number, e.g., a stock keeping unit or SKU, the market in which it is sold, the price, value added characteristics, e.g., special financing arrangements or premiums offered, and market type which relates to profit margin. The pricing software defines *an active price* (i.e., the real-time current valid price) for every item; the active price is a function of a *regular price* (i.e., cost plus usual system user's markup), an advertised price (if the item is an advertised special), a *sale price* (if the item is a sale item with a percent off or dollars off the regular price), and *competitors' prices* for the identical or substantially similar item.<sup>8</sup>

Thus, Reuhl et al deal with price information and do not gather the price-paid information. The “integrated price” information identified in the Office Action is not price-paid information. Thus, while the outstanding Office Action asserts that Reuhl et al, at column 12, lines 1-52, disclose a third field storing at least one of an inventory list price and a price differential between the inventory list price and the price paid, as discussed during the interview, Applicant finds no support in Reuhl et al for any recording of price paid information. Hence, Reuhl et al can not disclose a second field for storing the price paid for the item purchased, as defined in independent Claim 40. Thus, Claim 40 and the claims dependent therefrom patentably define over the applied prior art of Reuhl et al.

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<sup>8</sup> Reuhl et al, column 3, line 18, to column 4, line 6.

Consequently, in view of the present amendment and in light of the above discussions, the outstanding grounds for rejection are believed to have been overcome. The application as amended herewith is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
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**Interview Summary**

Application No.

09/730,592

Applicant(s)

FITZPATRICK, JAMES  
MICHAEL

Examiner

Debra F. Charles

Art Unit

3628

All participants (applicant, applicant's representative, PTO personnel):

(1) Debra F. Charles.

(3) \_\_\_\_\_

(2) Ronald A. Rudder, Ph.D..

(4) \_\_\_\_\_

Date of Interview: 03 June 2004.Type: a) ☐ Telephonic b) ☐ Video Conferencec) ☒ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.

If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: 1, 6 and 23.Identification of prior art discussed: Riordan et al.(U.S.PAT. 6078891A), Reuhl et al.(U.S.PAT. 5873069A).Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's representative discussed changes to claim 23 to overcome objections. Applicant's representative discussed the invention to point out that the recurrent information requests come from the central(third-party) computer to the point-of-sale computer. Additionally, arguments against combining Reuhl and Riordan were discussed. No agreement on patentability was reached although clarifying the recurrent information requests seem to differ from the credit authorization shown in Reuhl. Examiner indicated that when amendments come in, examiner will ask primary to review application.